

Self-Defence and Firearms in Canada

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The below is written by Rick Hemmingson, a lawyer who practices in central Alberta. He was certified as a firearms safety instructor decades ago in both Saskatchewan and Alberta. This article does not offer legal advice to any reader. It is intended for general informational purposes only. In particular, whether or not a person should confront a criminal is wholly dependent on the facts at hand and this article does not encourage or offer such advice to the reader. The intention of this article is to present a rational description and a basis for the concept of armed self-defence that is presently either missing or misshapen in public discourse. The author acknowledges, with gratitude, the encouragement of Mr. Dennis Young, Retired RCMP Officer, Parliamentary Assistant and Independent Firearms Researcher and some research assistance and expert comments on the final draft from Richard A. Fritze, Barrister and Solicitor. The opinions expressed herein belong to the author and he takes all responsibility for such opinions and inadvertent errors, if any.

Recent news stories about the use of a firearm to stop the commission of various crimes and subsequent statements from the RCMP have (again) raised the issue of armed self-defence under Canadian law. Does that right still exist? If so, how and when can it be exercised?

Canada has a history of decades of political fear-mongering about firearms and so it is difficult to have an intelligent, principled debate about the use of a firearm for self-defence by a citizen. Our divide-and-conquer politicians have frequently and effectively hoisted the spectre of homicidal gun owners, assisted by “journalists” who are willing to substitute moralizing and social engineering for principled fact-finding. We are therefore at a place where calm and rational debate about civilian use of firearms for self-defence has become extremely difficult. This may account for the RCMP’s denigration of that possibility and is the stimulus for this article.

After a recent incident where an Okotoks, Alberta farmer was charged as a result of shots fired during a robbery at his home by two persons at night, Sgt. Shawn French of the RCMP reportedly gave the following advice:

“We encourage property owners to not attempt to pursue or subdue any suspects, with the main reason public safety. We don’t want to see people getting hurt. We’re trained to handle these situations. We do treat them as priority calls and we try to get there in the most expeditious manner as possible.”¹

That same incident gave rise to similar advice from Staff Sgt. Robin Alexander who counselled that confronting criminals is “never a landowner’s best choice”. The news report characterized his advice thus: “Don’t take matters into your own hands when it comes to rural crime.”²

Landowners are being advised to avoid confronting criminals, to call the police and wait for help to arrive. Is this a legal requirement or is it just the opinion of some in the RCMP?

The common law (decided cases) is unsettled. The wide range of judicial opinion can be loosely exemplified with the following passages from two cases concerned with the charge of carrying a semi-concealed or concealed weapon. These cases were not about self-defence but they do shed some light on judicial attitudes.

First, from the British Columbia Court of Appeal in the *R. v. Sulland* decision there was an implicit acceptance of the use of a weapon in self-defence in a case where a person had been charged for carrying a weapon (knife) for a purpose dangerous to the public peace:

In my view, one does not commit the offence with which we are concerned if one carries a weapon for self-defence that is an appropriate instrument with which to repel, in a lawful manner, the type of attack reasonably apprehended, and if the person carrying it is competent to handle the weapon and is likely to use it responsibly That an attacker might be repelled forcefully, and even injured, is not a danger that the section refers to. In that case the attack, not the response to it, breaches the public peace.

It might be unwise to defend yourself or even prepare to defend yourself. The presence of a weapon might result in greater injury. In the secure surroundings of a courthouse we might think it better that people be beaten or raped than that they, or their assailant, be injured with a weapon. But those who must walk unsafe streets and who are not robust might feel quite differently. They might not be prepared to accept a beating. Some might choose to defend themselves, and they might carry something with which to defend themselves.³

In contrast, a majority of the Supreme Court of Canada ten years later in another case, *R. v. Felawka*, said this as it upheld the criminal conviction of a person charged with carrying a concealed weapon after he returned home from target shooting with a friend and had carried his .22 rifle wrapped in a jacket on a city bus:

All Canadians have the right to feel protected from the sinister menace of a concealed weapon. If it was ever thought that it was lawful to carry concealed weapons more and more Canadians might come to believe it would be prudent for them to carry concealed weapons in order to defend themselves and their families. This might lead to a vigilante attitude that could all too readily result in an increase in violence in Canadian society.⁴

The Sulland decision of the British Columbia Court of Appeal involved a knife. The Felawka decision of the Supreme Court involved a rifle. Does that fact change the law on whether a weapon can be possessed or used for self-defence? One would hope not. The Supreme Court's connection of armed self-defence to vigilantism was truly unfortunate. There is no causal connection between those concepts in any study that I have ever read – and I have read many.

The above cases, along with others, are the reason lawyers – and the police – will not say with any confidence exactly when a firearm (or other weapon) may be lawfully used for self-defence; except in the most dire and obvious hypothetical. Even then, however, one would have to admit to the very real possibility of a long, stressful and expensive slog through the courts when an entirely justified shooter is charged with one or more of the plethora of paper gun crimes now available to the police and prosecutors.⁵ The unintended consequence of that catalogue of victimless crimes is that police and prosecutors who are inclined to do so can chastise someone's otherwise entirely lawful use of a firearm to defend themselves. As far as I am aware, there is never any redress available to the innocents who are so punished nor, it seems, any effective disincentive to those who would do so. The deterrent effect on victims' access and use of a firearm for self-defence is real.

It is respectfully submitted that the common law is sometimes uninformed, misguided and simply wrong in its assessment of the conditions for use of a

weapon for self-defence. The Saskatchewan Court of Queen's Bench summarized a widespread view of our Courts in that regard as follows:

...[T]he right of self-defence commences when the necessity for such defence begins and it terminates when the necessity for such self-defence comes to an end. The law, however, requires that the force used in defending oneself must not be out of proportion to the severity of the attack. An attack by fists may be answered by fists but not with deadly weapons such as knives and guns. In exercising the right of self-defence one must use only such force as on reasonable grounds the person attacked believes to be necessary for his own defence. In short, self-defence means defence, not counter-attack.⁶

How can a woman possibly respond to an attack by fists if she is limited to using her own fists? How does an unarmed senior citizen respond effectively to the same attack? Is there a different standard for armed citizens than armed police? If so, what is the justification for that? A police officer was justified in shooting dead an assailant who was swinging a fire hose at him.⁷ By the same reasoning, would one not conclude that the police officer ought to have been limited to using his own fire hose for defence, not a pistol?⁸ Hopefully, this line of cases that seems to require equivalence in arms used by both sides will be relaxed under the new sections of the Criminal Code, as discussed below.

Our courts have declared that a person acting in self-defence is not required to measure the strength of his blows with exact precision.⁹ That is encouraging. Unfortunately, that latitude seems to fade when a firearm is used for defensive purposes by a citizen.

The Criminal Code of Canada is the source of criminal offences in Canada, not the RCMP. Relevant sections of the Code are Section 34 (defence of person) and Section 35 (defence of property), excerpts of which are set out below:

Defence of Person

Defence — use or threat of force

34 (1) A person is not guilty of an offence if

- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;**
- (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and**
- (c) the act committed is reasonable in the circumstances.**

Factors

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:

- (a) the nature of the force or threat;**
- (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;**
- (c) the person's role in the incident;**
- (d) whether any party to the incident used or threatened to use a weapon;**
- (e) the size, age, gender and physical capabilities of the parties to the incident;**
- (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;**
 - (f.1) any history of interaction or communication between the parties to the incident;**
- (g) the nature and proportionality of the person's response to the use or threat of force; and**
- (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.**

Defence of Property

Defence — property

35 (1) A person is not guilty of an offence if

(a) they either believe on reasonable grounds that they are in peaceable possession of property or are acting under the authority of, or lawfully assisting, a person whom they believe on reasonable grounds is in peaceable possession of property;

(b) they believe on reasonable grounds that another person

(i) is about to enter, is entering or has entered the property without being entitled by law to do so,

(ii) is about to take the property, is doing so or has just done so, or

(iii) is about to damage or destroy the property, or make it inoperative, or is doing so;

(c) the act that constitutes the offence is committed for the purpose of

(i) preventing the other person from entering the property, or removing that person from the property, or

(ii) preventing the other person from taking, damaging or destroying the property or from making it inoperative, or retaking the property from that person; and

(d) the act committed is reasonable in the circumstances.

It is worth noting that, until 2012, Section 34 limited the justification of force in self-defence to only such force that was “not intended to cause death or grievous bodily harm” unless the person was himself under a reasonable apprehension of death or serious bodily harm. That former wording was repealed in 2012 and replaced with the present wording.

One would have thought the necessary implication of this change is that our justice system would realize that it is now directed to consider a broad and specified range of factors in determining whether a particular use of force, including a firearm, in self-defence was legitimate in the particular circumstances at hand and that the factors which must be considered extend beyond the former

single requirement of a reasonable apprehension of death or serious bodily harm; which was often a difficult evidentiary hurdle.

On a plain reading of the Code, the analysis of self-defence is not abbreviated or shortened by the presence of use of a firearm. If the drafters of the Code wanted that result, they would have said that some or all of the enumerated criteria in Section 34(2) do not need to be considered where a gun was used for defence. The presence or use of a firearm by a crime victim is therefore surely not sufficient grounds to charge an otherwise innocent victim. Whether or not a firearm was used should be merely one of the circumstances; it does not change the law nor introduce some different set of factors.

Presumably, Section 35 is also to be applied according to the enumerated criteria in Section 34(2). If the same list of factors in Section 34 applies in Section 35 because the exact same phrase “reasonable in the circumstances” is used in both sections, then certainly some additional caution is required in defending property because few of the Section 34 “Factors” would seem to arise in a simple defence of property. That is as it should be. However, one can imagine how quickly the legitimate defence of property might possibly evolve into defence of the person when an active criminal is confronted. In that scenario, one may wonder whether and when a Court might find that a landowner’s confronting a property thief amounted to “a role in the incident” when criminal activity surges and the defence of property becomes defence of the person with a firearm. That would be unfortunate because a criminal who decided to threaten, attack or overpower a homeowner defending his property is the one who has escalated the situation to defence of the person, not the homeowner. Obviously, this is not to say that anyone is justified in shooting a trespasser or thief for simply being a thief.

It is important to say at the outset that the above sections of the Code are fairly new and have not yet had the benefit of judicial interpretation. It is therefore impossible to predict with certainty whether, and to what extent, the Courts will tolerate a homeowner or a rural landowner using a firearm or other weapon to defend life and limb or for possessing the same while defending his property. On the other hand, that very same uncertainty surely supports the

conclusion that these sections also do not require all farmers to permit crimes to unfold as they wait for police.

If Canadians have a right to effective self-defence then surely that right must extend beyond simply making a “911” call and then hunkering down and hoping for the best. There are some other places we can look for guidance as to whether a self-defence action was “reasonable in the circumstances.” Remember, that is the criterion that must be met under the Criminal Code.

The first place we might look for guidance is the United Nations’ Universal Declaration of Human Rights. That historic statement of global civil rights was adopted in 1948 long before the Canadian Charter of Rights and Freedoms was made part of our own constitution. There were no dissenting votes. Some relevant passages in the UDHR read as follows:

The General Assembly

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 3

Everyone has the right to life, liberty and the security of person

This 1948 Declaration required member states (Canada) to take measures that “secure” the “effective” recognition of all the rights contained therein, including Article 3. More will be said about that later.

In 1966, the U.N. also adopted the International Covenant on Civil and Political Rights. That document was ratified by Canada in 1976. It affirms the right to life; which was cast as a supreme right with no derogation (lessening) of that right being allowed to any member State.¹⁰

On the basis of the above sources, we can conclude that the right to life is inviolable and must be protected by positive measures taken in member States which grant “effective recognition” to those essential human rights. Is it “effective” to require persons under threat of harm or possible death to call 911 and then wait to see how it turns out? Is it “effective” to charge and prosecute a man for protecting his life from fire-bombers by firing warning shots with a pistol? I think not.

Canadian law is no stranger to recognizing that constitutional rights must not just be given lip service but must be effectively protected. It is not sufficient, for example, in protecting the right to freedom of religion to permit mention of God only in hushed tones behind a closed door. It is not sufficient, for example, in protecting the right to equality in Section 15 to tell same-sex couples they can live together but only quietly, in private. The Court of Appeal of Ontario in 2003 held that the effective recognition of the right to be treated equally regardless of sex meant that people who identified as homosexuals had the right to a full, public and legally recognized marriage. Other rights have been similarly fortified and expanded to ensure they can be effectively exercised by the individual. Why do we shirk from effectiveness when it comes to defence of our lives and our families?

If Canadians have a right of self-defence (and we clearly do) then we also have the right to effectively exercise that essential right and in a manner that meets the purpose behind the words “right to life” and “security of the person”. Such analysis is part of our Courts’ “purposive approach” to determining the scope of all Charter rights and in determining whether or not a recognized right has been infringed or derogated by some action of the State.

Section 7 of our Charter of Rights and Freedoms, like the U.N. Declaration, expressly guarantees and protects the individual’s right to life, liberty and

security of the person free from unjustified interference by the State. The scope of that protection obviously extends beyond a simple prohibition against unjustified violence against the individual by forces of the State. For example, Section 7 has been found to support a positive entitlement to social assistance and public health care.¹¹ That would certainly be an example of “effective” protection of a guaranteed right.

What is the purpose of the Section 7 guarantee to life and security of the person? Does the purpose not include a guarantee that law-abiding citizens will have access to the means to effectively defend against threats of death or even immediate harm? What about taking steps to defend against robbery – is robbery not also an affront to security of the person because of the personal violation and residual insecurity and fear that is visited on robbery victims? How can Section 7 rights be effectively protected if crime victims are made to submit to robbery or other crimes? How would forced surrender by citizens advance the purpose of Section 7, exactly?

Canadian law also prohibits any measures taken by the State which create “adverse effects” on a guaranteed Charter right.¹² If a person is prevented or discouraged from ever effectively exercising his right to self-defence then is that right not “adversely affected”? It can be argued that these RCMP admonitions and the near-certainty of a painful and expensive prosecution for use of a firearm “adversely affects” our effective exercise of the fundamental right of self- defence.

If we conclude that the purpose of Section 7 does require access to some means to effectively protect the human rights within it then what means are guaranteed? Are we only guaranteed the right to make a 911 phone call? If so, the guarantee is worthless to those in the most dire need of self-defence because the 911 call will not protect against a threat that is present on your property, at your doorstep or inside your home. That fact is advanced by the police themselves in their own defence in every case where a victim attempts to hold them liable for failing to respond, or respond in time, to stop an attack.

If Section 7 protects a woman's right to kill her unborn baby for convenience reasons (and it does) then it is truly difficult to understand how the same Section 7 cannot give that same woman the right to use a firearm to defend her life and security.

If Section 7 protects prostitutes from prosecution for working in a brothel because it is unconstitutional to expose prostitutes to the additional risk that come with a ban on brothels (and it is)¹³ then how can the same Section 7 not apply to protect from prosecution a law-abiding citizen who might possess, brandish and/or use a firearm to protect himself and his family from the real, imminent and visible danger that is invariably presented by criminals forcing their way into his property at night?

If the law limits me to hunkering down and waiting to see if and when the police arrive, I respectfully submit that such a limit does not meet the purpose of Section 7 of the Charter.

In 2005, an unarmed woman named Brenda Moreside called 911. Her drunken ex-boyfriend was breaking into her High Prairie home and she needed help. She was told that since the man lived with her, the RCMP were not able to keep him out. Ms. Moreside was stabbed seven times and died.

In 2000, two aboriginal women in Winnipeg repeatedly called 911 and asked for help after a former boyfriend entered their home contrary to a restraining order and methodically stabbed them to death over a period of hours. When police finally arrived, both women were dead.

RCMP were not liable for delivering a husband charged with assault back to the matrimonial home the next day, without the promised warning to the wife, whereupon he burned down the couple's house. Such a claim was dismissed without a trial because the now-homeless wife had no hope of success.¹⁴

Are those extreme examples? Yes, of course they are; but that is no consolation to the deceased victims or their families. The point is that there are indeed occasions when a citizen either has access to lethal force to protect their own life or s/he will die. It is just that simple. Advising everyone to “call 911” in case of emergency does not protect any fundamental human rights, let alone “effectively recognize” that most basic human right – the right to stay alive.

Police owe no legal duty to protect individuals from criminal attack. There are reasons for that immunity that are beyond the scope of this article. It is why, for example, we never hear of a successful lawsuit by a rape victim or a robbery victim or the family of a murdered person against the local police force who – obviously – did not keep the criminal away from his/her victim. Both our Courts and our police forces acknowledge, when sued, that the police are not guarantors of anyone’s safety and police are therefore not generally liable for negligence or otherwise to the victims of crime. There have been some instances of police liability where the police failed to issue a warning that a serial rapist was loose but that liability is premised on a failure to warn, not a failure to protect.¹⁵ An unspecific warning about a possible future criminal attack is not itself an “effective” protection of anyone’s right to life and safety; especially for a citizen who cannot expect an instantaneous police response and might feel restricted to his or her bare hands in defending against such heightened risk.

It is interesting, and disturbing, that this known fact has led many U.S. police chiefs to advise their citizens to get a gun and learn to use it for their own protection in case the unimaginable happens before the police can get there while in Canada our police chiefs advise the same citizens to “call 911” and wait for the cavalry.

Even if we set aside consideration of those cases where police response is an abject failure, homeowners in rural areas are left to deal with the fact that police response times are invariably too slow to amount to anything that can be called “protection”. In a recent radio interview, well-known criminal and firearms attorney Ed Burlew noted that response times to rural areas of southern Ontario was in the area of 45 minutes. In my own practice, I have had farmer clients tell me that response times to a reported theft can run into a day or two. The

response time for an emergency call for help is no doubt less than that, but even a response time of 30 to 45 minutes does not amount to “protection” for someone living in a rural area who is under threat from a trespasser with criminal intentions who is either entering his buildings or entering his home.

Last year, an Alix, Alberta man was attacked with a machete by two masked home invaders. The bleeding victim made it to a neighbours’ home where he waited for over an hour for RCMP from Bashaw to arrive. Bashaw RCMP publicly disputed that claim and said they responded in only 50 minutes. How does a homeowner find “security of the person” if he is required to trust his life and safety to the protection of police who won’t arrive for 50 minutes? Requiring such persons to resort to a 911 call for protection of their and their family’s lives and safety is not the “effective” protection of this essential human right that is guaranteed by our Charter and by international law as expressed by the United Nations. It is also immoral.

In the March 14, 2018 edition of CBC News it was reported that a Saskatchewan property owner near Spiritwood observed his truck being stolen after a break-and-enter and had fired a warning shot during the crime. RCMP stated that it had been decided the property owner would not be charged but “we want to remind the public that “introducing a firearm or other weapon into a situation can be very dangerous.”¹⁶ Police went to say that crime victims should call 911.

The first part of that advice was technically correct. A firearm can indeed be dangerous. However, that fact shouldn’t determine anything. If the connotation was to restrict crime victims to their bare hands in resisting crime, it was wrong. If it was to restrict all victims to a 911 call it was contrary to the rights guaranteed in our constitution. Calling an emergency number to request assistance that cannot arrive in time to provide protection seems about as realistic as summoning an ambulance from the next Province to respond to an ongoing heart attack. The patient will survive or not; but having ordered the ambulance does not affect the outcome.

It is instructive to take a close look at this advice given to the Spiritwood community because it was fairly typical of what we hear from RCMP and other big police organizations in similar situations. First of all, what is the “situation” being referred to? It was a crime in progress, a major theft with break-and-enter. Three people were later arrested so one can assume there was more than one criminal on the man’s property working together. One of the persons later arrested was charged with break and enter, vehicle theft, unauthorized possession of a firearm; possession of a gun for a dangerous purpose and other charges. It would seem, therefore, that the “situation” may have also included armed thieves. Is it so unusual for thieves to have a weapon that the RCMP would encourage citizens to challenge such thieves unarmed? If unarmed confrontation is a good idea for citizens, why is it not also a good idea for the RCMP and, if so, should we insist that they disarm before confronting a vehicle thief?

If a firearm or other weapon is always a “bad idea” then should we conclude that the RCMP were actually advising Spiritwood property owners to stand down and submit to robbery? How does surrender to crime and invasion protect anyone’s “security of the person”? When criminals anticipate submission coupled with an ineffective 911 call, are they dissuaded from committing more robberies, or encouraged? Do we think rural homeowners are not bright enough to realize that unopposed theft and property invasions will only lead to more of the same? Therefore, how would advising submission to criminals not adversely affect their right to security of the person?

An argument can be made that banning access to firearms for self-defence is itself a breach of Section 7 of the Charter because it is a government action that renders law-abiding citizens less safe and more fearful. Security of the person cannot, by definition, encompass a requirement that one assume a risk of death or injury nor that one be required to accept a circumstance of helplessness with an uncertain outcome. The concept of security of the person in Section 7 has a psychological dimension.¹⁷

In the Spiritwood case, it would appear the criminals were actually the ones “introducing” a weapon to the situation, not the homeowner. But even if it was only the homeowner who was armed, how can that be universally condemned as a

“bad idea” when such homeowner would have no way of knowing beforehand whether the criminals breaking into his garage and stealing his vehicle might themselves be armed with a weapon(s)?

Lastly, the news report contained an admonition from the Spiritwood RCMP about “using any weapon” to resist crime. Surely, we are not all required to resist crime with our bare hands! That may work much of the time for a 250 lb. MMA fighter but it is not going to work at all for most women and seniors. Perhaps the officer was misquoted.

To the extent rural Canadians – or any Canadians for that matter – are denied the right to effectively exercise their essential rights to protect life and limb and protect their security of the person, those rights are placebos and do not really exist. It is just verbiage.

This dichotomy between discouraging (some would say effectively prohibiting) firearms ownership and/or use and the necessity for access to a firearm for defence in some cases highlights the statist’s dilemma. The statist would prefer that ordinary non-violent citizens are disarmed and made to rely on police protection provided by the State rather than self-defence. At the same time, the statist would insulate the State’s police from liability for failures to defend citizens who fall prey. When one considers that about 170,000,000 people were killed by their own governments in the 20th Century, this does not seem like an ideal orthodoxy.

If the criminal justice system, by any combination of laws, police threats or bias and/or prosecutorial decisions prevents or discourages access to firearms for self-defence then the citizenry has the right to demand that such impediments be demonstrably justified. Citizens have a right to be free from arbitrary limits on their right to effectively exercise these most basic human rights. If measures taken by law-makers and their agents are over-broad or disproportionate to the actual risk to society presented by gun owners, then those limitations cannot stand.

Having done considerable research in the area, I am not aware of any time in Canadian history when firearms were generally over-used for defence of life and limb – or property for that matter. Our present laws appear to have been based on unsupported hypotheticals proffered for political gain. In the case of handguns, for example, our restrictive laws seem to have originated in the 1930s, for the most part, out of fear that the violent Bolshevik revolution in Russia could spread to Canada, perhaps through Slavic immigrants, and it was thought best to enable quick seizure of handguns in case of unrest. I have so far not met a single radical Bolshevik in Canada, armed or otherwise, nor do I know anyone who has. Dr. Caillin Langmann published an in-depth study¹⁸ of gun laws and murder rates in Canada since the first gun licence, the Firearms Acquisition Certificate, was invented in the 1970s and found no reduction in murder rates as a result of our gun control laws.¹⁹ Law-abiding citizens who are armed don't kill other people. They just don't.

It is sometimes said that firearms are different because they are inherently dangerous to life and limb. Indeed they are. It is that very aspect that makes a firearm so effective in self-defence. That is why police carry firearms and not sticks.

According to a news report by Lorne Gunter made March 17, 2018, in the Toronto Sun, rural crime in many parts of Canada rose 20 per cent over the last five years. According to a report by CHQR radio in Calgary, rural vehicle theft south of that city has risen 100 per cent since 2014.

So far, our Liberal politicians seem to think the answer is more gun control. In fact, that response makes matters worse. The increased likelihood that future victims will be unarmed or, if armed, too afraid to use their weapon are the unintended consequences that will combine to reduce the risk of apprehension and conviction. The criminal element is already quite aware of the utterly inadequate police response times to rural crime scenes. The risk-reward equation is seriously out of balance and hence we see rapidly rising rural crime rates, including crime with violence. That belief is reinforced by the widely-publicized case of Saskatchewan farmer Gerald Stanley who was found innocent in the accidental shooting death of one of a group of invaders. Whether or not one

accepts the jury's verdict in that case, it should be a cause for general concern that not one of the criminal invaders was charged with anything!

The fact is that a very small percentage of violent crimes are committed with a gun in Canada. StatsCan figures are unhelpful in that regard because the RCMP seems to only track (or report?) violent crimes where "a firearm was present". It would be helpful to know who used the firearm that was present – was it the criminal or the police or an armed citizen? Furthermore, was the firearm that was "present" used at all or are we lumping in crime involving a gun owner? What useful purpose would that inflated statistic serve? Regardless, the overall rate of homicide is going down and the number of homicides committed by gangs, with or without guns, is going up. Yet, we give the RCMP an annual budget of \$53.3M to run gun licencing and registration programs. We are paying \$53.3M to track a class of citizen who are three times LESS likely to commit murder than those who do not have a gun licence.²⁰ If we are paying the RCMP to track people in the expectation this will result in less crime, then wouldn't it be more effective to track the group who do not have a gun licence since they are the people who are far more likely to murder someone? Since gun control laws are not themselves rationally connected to facts, I suppose it is appropriate that neither spending nor causality in policing those laws should be rationally connected to facts, either.

There is no doubt the State has the right to impose reasonable and justified limits on our fundamental rights and freedoms but when it comes to an essential rights such as the right to life and to security of the person, any derogation should be restricted to the minimum amount possible and as can be justified by objective data, not by fear and social totems created for other purposes.

We are not yet become a nation of cowards²¹ and the law does not require our submission to criminals. That is a decision which ought to be made by each individual in the circumstances at hand, being trusted and empowered by his government to act appropriately.

REFERENCES

1. CBC Calgary news report of February 25, 2018 citing The Canadian Press
2. High River Online report of February 27, 2018 by Russell Skeet
3. *R. v. Sulland*, (1982) 2 C.C.C. (3d) 68 at paras. 9-10
4. *R. v. Felawka* [1993] 4 S.C.R. 199 at para. 23. It probably did not help that the accused had made a rude remark about intending to go on a “killing spree” when he was stopped and questioned by a transit employee.
5. Nowhere was this made more clear than in the Ian Thomson case where a homeowner was charged and prosecuted for using a firearm to defend himself against two men firebombing his house knowing he was at home.
6. *Harris v. Wong* (1971), 19 D.L.R. (3d) 589 at para. 23
7. See, *R. v. Graydon* 1992 CarswellAlta 613 (Q.B.)
8. *Chartier v. Graves* 2001 CarswellOnt 563.
9. E.g., *Wacket v. Calder* (1951) 51 D.L.R. (2d) 598 (B.C.C.A.); *Bruce v. Dyer* (1966) 58 D.L.R. 92d 221 (Ont. H.C.)
10. See UN OCCHR 30 April 1982, General Comment #6 cited at www.refworld.org/docid/45388400a.html
11. *Chaoulli v. Quebec* [2005] S.C.C. 35
12. *Eldridge v. B.C. (Attorney General)*, [1997] 3 S.C.R. 624
13. *Canada v. Bedford* [2013] 3 S.C.R. 1101.
14. See, *McClements v. Pike*, 2012 CarswellYukon 143 and cases cited therein.
15. e.g., *Spencer v. Canada (Attorney General)* 2010 N.S.S.C. 446 (police not liable for arson by released husband); *Wellington v. Ontario*, 2011 O.N.C.A. 274 at para. 20
16. *Saskatoon Star-Phoenix*, March 14, 2018 reporter Dave Deibert.
17. Constitutional Law – Right to Life, Liberty and Security of the Person, CED Constitutional Law, Marian E. Bryant.
18. <http://journals.sagepub.com/doi/abs/10.1177/0886260511433515> see: October 2, 2011 National Post news report.
19. I am aware of contrary studies and have read most of them. A full discussion and critique of gun control studies is beyond this article but suffice it to say that contrary studies typically rely on semantics and/or junk science.
20. Mackenzie Institute research article "Do Triggers Pull Fingers? A Look at the Criminal Misuse of Firearms in Canada", published July 23, 2015 by Dr. Gary Mauser.
21. Interested readers may wish to read: “A Nation of Cowards, Essays on the Ethics of Gun Control” by Jeff Snyder, Accurate Press 2001.